

Message Text

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PAGE 01 STATE 119888
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C O N F I D E N T I A L STATE 119888

FOR AMB. RICHARDSON

E.O. 11652: GDS

TAGS: UNCTAD, PLOS, EMIN

SUBJECT: US/CANADIAN PROVISIONAL AGREEMENT ON PRODUCTION
CEILING

REFS.: A) GENEVA 6881; B) GENEVA 6934; C) GENEVA 7036

1. THE PROPOSED PRODUCTION FORMULA DESCRIBED IN REFTELS
A AND B SEEKS TO BALANCE THE INTERESTS OF PROSPECTIVE
SEABED MINING COUNTRIES AGAINST THOSE OF LAND-BASED NICKEL
AND COPPER PRODUCERS. WHILE SOME ASPECTS OF THE PROPOSAL
CLEARLY REPRESENT PROGRESS TOWARD AN ACCEPTABLE FORMULA,
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PAGE 02 STATE 119888

WE HAVE QUESTIONS ABOUT OTHER ASPECTS AND REQUEST THE
DELEGATION'S VIEWS. THOUGH THE HISTORICAL PERSPECTIVE
BELOW WILL BE FAMILIAR TO THE DELEGATION, IT IS A USEFUL
BACKDROP FOR THE QUESTIONS WHICH FOLLOW.

2. AT THE 5TH LOS SESSION IN 1976, AFTER HAVING
OPPOSED ARTIFICIAL PRODUCTION CONTROLS ON SEABED

MINING, THE US ACCEPTED THE COMPROMISE FORMULA IN THE RSNT. THIS FORMULA ASSURED THAT FOR THE FIRST 20 YEARS, SEABED MINING WOULD COMPETE WITH LAND-BASED PRODUCERS FOR THE GROWTH SEGMENT OF THE COPPER AND NICKEL MARKETS, WHILE EXISTING LAND-BASED CAPACITY WOULD BE PROTECTED.

OUR GROWTH PROJECTIONS FOR WORLD NICKEL AND COPPER MARKETS SUGGESTED (AND STILL DO) THAT THIS COMPETITIVE RELATIONSHIP WOULD PREVAIL EVEN WITHOUT EXPLICIT PRODUCTION CONTROLS. NEVERTHELESS, WE WERE PREPARED TO ACCEPT THE RSNT FORMULA AS A TRADE OFF FOR AN OVERALL SATISFACTORY SEABED REGIME, BECAUSE THE FORMULA ALLOWED AMPLE SCOPE FOR SEABED MINING TO DEVELOP AT A RATE DETERMINED BY TECHNOLOGICAL AND ECONOMIC FACTORS IN THE MARKET. AS PROSPECTIVE MINERS AND MAJOR MINERAL CONSUMERS, THE US HAS AN INTEREST IN ENCOURAGING SUCH EFFICIENT RESOURCE DEVELOPMENT.

3. THE RSNT PRODUCTION CONTROL FORMULA PROVED ILL-FATED, HOWEVER, AS DID SEVERAL OTHER US COMPROMISE INITIATIVES. THE G-77 REPUDIATED THE RSNT, WHILE POCKETING OUR CONCESSIONS. SPEARHEADED BY CANADA, THE LDC PRODUCERS OF NICKEL AND COPPER HAVE RECENTLY DEMANDED NOT ONLY PROTECTION OF CURRENT CAPACITY BUT A GUARANTEED SHARE OF FUTURE GROWTH IN THE MARKET. IN THEIR VIEW, SEABED MINING SHOULD COMPETE FOR ONLY A

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PAGE 03 STATE 119888

PORTION OF THE NICKEL AND COPPER GROWTH SEGMENTS. REALISTICALLY, THE FIRST GENERATION OF SEABED MINING (TO ABOUT 2005) SHOULD HAVE A NEGLIGIBLE IMPACT, AT BEST, ON THE LARGE COPPER MARKET, BUT COULD CAPTURE A SUBSTANTIAL PORTION OF THE RELATIVELY SMALLER NICKEL GROWTH SEGMENT. HOW MUCH OF THE NICKEL GROWTH SEGMENT MIGHT BE SO CAPTURED - WHETHER HALF OR MORE - IS OPEN TO CONJECTURE, AS IT WOULD DEPEND ON ASSUMPTIONS ABOUT MARKET CONDITIONS.

4. THE QUESTIONS BELOW CONCERN BOTH THE PRACTICAL EFFECT OF THE PROPOSED PRODUCTION CONTROL FORMULA ON SEABED MINING AND THE IMPLICATIONS OF THIS FORMULA FOR ACHIEVING AGREEMENT ON A SEABED REGIME THAT PROVIDES ASSURED ACCESS TO PRIVATE MINERS.

5. PRACTICAL EFFECT:

- A. ALTHOUGH THE FORMULA WOULD ALLOW FOR THE PROJECTED NUMBER OF MINE SITES UP TO THE YEAR 2005 (ABOUT 15-20), DOES IT PROVIDE AN ADEQUATE CUSHION TO ACCOUNT FOR THE INHERENT UNCERTAINTIES OF THIS LONG RANGE SITE PROJECTION? ONCE A LEGAL REGIME IS

ESTABLISHED, SEABED MINING COULD SOON ATTRACT NEW ENTRANTS (E.G., PETROLEUM COMPANIES) WITH THE CAPACITY TO MOBILIZE ADDITIONAL CAPITAL AND TECHNOLOGY IF MARKET CONDITIONS WARRANT. FURTHERMORE, TECHNOLOGICAL INNOVATION COULD CONTINUE TO INCREASE THE ECONOMIES

OF SCALE TO MINING, THUS PUTTING UNANTICIPATED PRESSURE ON THE PRODUCTION CEILING.

- B. WILL THE SHARPLY REDUCED LIMIT ON ALLOWABLE SITES (ABOUT 1/3 OF THE RSNT CEILING) STIMULATE A RUSH OF CONTRACT APPLICATIONS BY STATES PARTIES AND THE ENTERPRISE, FEARING EXCLUSION FROM THE FIRST GENERATION OF MINING? DESPITE PERFORMANCE REQUIREMENTS IN CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 119888

CONTRACTS, A RUSH FOR SITES COULD OCCUR, PERHAPS NECESSITATING COMPETITIVE BIDDING FOR SITES AND ENCOURAGING SPECULATIVE APPLICATIONS. SUCH CONDITIONS COULD RETARD OR DISCOURAGE INVESTMENT BY BONA FIDE MINERS.

6. IMPLICATIONS FOR ACHIEVING AN ACCEPTABLE SEABED REGIME:

- A. WHAT SPECIFIC TRADEOFFS ARE ENVISAGED IN THE ASSERTION (REFTEL A) THAT QUOTE THIS AGREEMENT SHOULD SERVE AS A POWERFUL LEVER TO MOVE THE CONFERENCE TOWARD ACCEPTABLE COMPROMISES UNQUOTE? DOES THIS IMPLY THAT THE PRODUCTION FORMULA COULD BUY US AN OTHERWISE ACCEPTABLE SEABED REGIME WITHIN CURRENT INSTRUCTIONS?

- B. WON'T THE SHARPLY REDUCED LIMIT ON SITES CREATE INTENSE PRESSURE FOR A QUOTA/ANTI-MONOPOLY PROVISION THAT COULD EFFECTIVELY RESTRICT PROJECTED US MINING? FOR EXAMPLE, THE FRENCH, WHO ARE ALREADY TROUBLESOME ON THIS QUESTION, COULD CAUSE MISCHIEF AMONG LDC'S AS CANADA HAS ON PRODUCTION CONTROLS. ASSUMING THAT EACH OF THE US-LED CONSORTIA HAS 3-4 SITES AS PROJECTED, ONLY 10-14 SITES WOULD REMAIN FOR THE ENTERPRISE AND THE REST OF THE WORLD.

- C. ALTHOUGH THE 25-YEAR TIME LIMIT IS A POSITIVE FEATURE OF THE PRODUCTION FORMULA, WOULD IT NOT BE RENDERED MEANINGLESS IF THE REVIEW CONFERENCE PROVISION PERMITTED THE ASSEMBLY TO IMPOSE A MORATORIUM ON LICENSING AFTER 25 YEARS, AS NJENGA'S COMPROMISE TEXT NOW PROPOSES (REFTEL C)? IN THAT SITUATION, THE CONFIDENTIAL

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PAGE 05 STATE 119888

US WOULD APPEAR TO FACE UNPALATABLE OPTIONS - EITHER
WITHDRAWAL FROM THE TREATY, OR ACQUIESCENCE IN THE
MORATORIUM.

- D. SINCE IT APPEARS THAT SOME MAJOR SEABED
ISSUES WILL REMAIN UNRESOLVED AT THE END OF THIS SESSION,
WILL NOT THE PROPOSED FORMULA LEAVE THE US IN A HIGHLY
VULNERABLE NEGOTIATING POSITION AT FUTURE SESSIONS, WITH
NO FURTHER FLEXIBILITY ON A KEY ISSUE?

7. THE FOREGOING QUESTIONS AND CONSIDERATIONS ARE BASED
ON VIEWS OF STATE, TREASURY, OMB, AND COMMERCE. AGENCIES
MAY OFFER ADDITIONAL QUESTIONS AND COMMENTS. VANCE

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